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In re Application of
SADO, Mitsuo
U.S. Application No.: 09/117,795
PCT No.: PCT/JP97/00544
Int. Filing Date: 26 February 1997
Priority Date: 07 March 1996
Attorney Docket No.: CU-1758 RJS
For: RELEASANT FOR AQUEOUS
POLYMER-TYPE FLOOR POLISH

DECISION

This communication is in response to applicant's "Response to Decision and Submittal of Documents" filed 28 January 1999, requesting the Patent and Trademark Office ("PTO") declare that an executed declaration for the above captioned application was filed on 10 November 1998. This is being treated as a petition under 37 CFR 1.181. No petition fee is required.

BACKGROUND

On 15 January 1999, a decision was mailed stating that an oath or declaration and a surcharge of \$130.00 as required by 37 CFR 1.492(e) for furnishing the declaration later than thirty months from the earliest claimed priority date and an English translation and a processing fee of \$130.00 as required by 37 CFR 1.492(f) for providing an English translation after thirty months from the priority date was required on this application. A one month time period was set for response.

On 28 January 1999, applicant responded by filing the instant petition which was accompanied by, *inter alia*, a copy of the transmittal letter submitted 10 November 1998; a copy of an executed declaration; a copy of an Information Disclosure statement and references; a copy of English text of the international application; a copy of a check in the amount of \$170.00 for payment of the surcharge and assignment recording fee, a copy of several postcard receipts and an Express Mail receipt, and; a check for \$300.00 for payment of \$130.00 for the surcharge, processing fee of \$130.00, and a \$40.00 assignment recording fee.

DISCUSSION

Declaration

Section 503 of the Manual of Patent Examining Procedures lists procedures for applicants to ensure receipt of any paper filed in the PTO and states, in part:

If a receipt of any paper filed in the Patent and Trademark Office is desired, it may be obtained by enclosing with the paper a self-addressed postcard identifying the paper. The Patent and Trademark Office will stamp the receipt date on the card and place it in the outgoing mail.

The identifying data on the card should be so complete as to clearly identify the paper for which receipt is requested. For example, the card should identify the applicant's name(s) or alphanumeric identifier, application number, filing date, interference number, etc., and the paper(s) should be identified by specifying the type thereof, namely affidavit, amendment, appeal, components of applications, brief, drawings, fees, motions, supplemental oath or declaration, petition, etc.

A review of the record reveals that applicant has provided sufficient evidence to establish that the declaration was sent on 10 November 1998. The proof is in the form of a copy of the postcard receipt which bears a PTO datestamp of "303 Rec'd. PCT/PTO 10 NOV. 1998." The postcard receipt includes the applicant's name, and title of the invention on the receipt and the receipt itemizes that a transmittal letter, declaration and power of attorney, an assignment cover sheet, and a check for \$170.00 were received by the Office.

However, the application number on the postcard receipt is "09/125,162," instead of "09/117,795." It appears from the record that the application was originally given the number "09/125,162" by the PTO when the papers were originally filed on 13 August 1998. Therefore, applicant was correct in assuming that the application number was "09/125,162" when he mailed the declaration. Accordingly, in view of the postcard receipt and Office financial records, the declaration and surcharge may properly be accepted as having been filed on 10 November 1998. Nevertheless, the postcard receipt does not serve as *prima facie* evidence that the surcharge and assignment recording fee were cashed by the PTO.

Applicant and applicant's attorney are hereby notified to use only application number "09/117,795" for any future correspondence regarding patent application titled "RELEASANT FOR AQUEOUS POLYMER-TYPE FLOOR POLISH." Application number "09/125,162" has been assigned to another patent application.

English Translation

The 15 January 1999 decision stated that applicant was required to furnish an English

translation and processing fee as required by 37 CFR 1.492(f). This statement was erroneous. The international application was published in English, therefore, applicant did not need to provide an English translation after thirty months from the priority date.

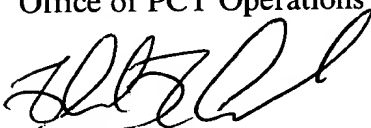
Accordingly, Counsel's Deposit Account No. 12-0400 will be credited \$130.00.

DECISION

As discussed above, the petition to accept the declaration as filed 10 November 1998 as a timely response in this application and to withdraw the holding of abandonment is **GRANTED.**

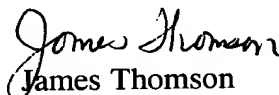
Applicant has completed the requirements for acceptance under 35 U.S.C. 371(c). The application has an international filing date of 26 February 1997, under 35 U.S.C. 363, and a 35 U.S.C. 102(e) and 371(c) date of **10 November 1998.**

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.



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